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JOHN CRANE INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

EVERETT HOGGE and  
PRISCILLA HOGGE,

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.,

Defendants.

No. C 07 2873 MJJ (EDL)

**DECLARATION OF PHILIP S. WARD  
IN SUPPORT OF OBJECTIONS TO  
REPORT AND RECOMMENDATION  
BY MAGISTRATE JUDGE TO  
GRANT REQUEST FOR  
ATTORNEYS' FEES AND  
EXPENSES**

I, Philip S. Ward, declare as follows:

1. The facts stated herein are true of my own personal knowledge such that if sworn, I could testify competently thereto;
2. I am an attorney admitted to practice in all the courts of the State of California. I am also admitted to practice in the Northern, Eastern and Southern Districts of California and the Ninth Circuit Court of Appeals;
3. For the first fourteen years of my practice, I was a Deputy City Attorney for the City and County of San Francisco. In that position, I devoted substantial time to civil litigation in both the state and federal courts. I have tried approximately 35 civil actions to jury verdict in both the federal and state courts. I

1 have also represented clients in a variety of lawsuits involving, among others, civil  
 2 rights and employment claims in both court systems. See, e.g., Fadhl v. San  
 3 Francisco, 859 F.2d 649 (9th Cir. 1986); King v. Massarweh, 782 F.2d 825 (9th Cir.  
 4 1986); San Francisco v. United States, 615 F.2d 498 (9th Cir. 1980); Van Atta v.  
 5 Scott, 27 Cal. 3d 324 (1980); San Francisco v. United Assn., etc., 42 Cal.3d 810  
 6 (1986); McColm v. Restoration Group, 2007 U.S. Dist. LEXIS (E.D.Cal. 2007); United  
 7 States v. San Francisco, 656 F.Supp. 276 (N.D.Cal.1987).

8 4. In 1987, I joined Hassard Bonnington LLP where I continue to  
 9 practice. In the last twenty years, I have represented numerous defendants in  
 10 asbestos personal injury and wrongful death actions. During that period, I have  
 11 started approximately 50 jury trials in asbestos cases, with as many as 18 going to  
 12 verdict. A number of those cases also involved appeals from the jury's verdict. See,  
 13 e.g., Wilson v. John Crane Inc., 81 Cal.App.4th 847 (2000); Hackett v. John Crane  
 14 Inc., 98 Cal.App.4th 1233 (2002); Taylor v. John Crane Inc., 113 Cal.App.4th 1063  
 15 (2003); Jones v. John Crane Inc., 132 Cal.App.4th 990 (2005); Cadlo v. Metalclad  
 16 Insulation, et al., 151 Cal.App.4th 1311 (2007).

17 5. In virtually every asbestos personal injury action I have tried to  
 18 verdict, the presiding judge assigned the case to a trial department at a time when  
 19 more than one defendant was still appearing through counsel in the action. In every  
 20 such case, while pretrial matters were being attended to (e.g. resolving motions in  
 21 limine, agreeing upon a jury questionnaire, conducting hardship voir dire), defendants  
 22 would announce through trial counsel that they had settled the case with plaintiffs and  
 23 would no longer be appearing to contest the action. In every such case that went to  
 24 verdict, my client either was the only defendant at the end of the case or there was a  
 25 single co-defendant remaining when the verdict was returned. At no time during that  
 26 twenty year period did a defendant ever "reappear" in the case after counsel  
 27 announced a settlement with the plaintiffs.

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1           6. In the last seven years, virtually every case in which I have  
2 appeared as trial counsel was assigned a preferential trial date because one of the  
3 plaintiffs claimed to be in imminent danger of death from a cancer allegedly caused  
4 by asbestos exposure. The instant action is simply the latest example of that trend.  
5 In all but one of my trial cases, the plaintiff died after verdict and his spouse, and  
6 other heirs, commenced a wrongful death action against, *inter alia*, the defendant(s)  
7 against whom a verdict had been returned by the jury in the personal injury action. In  
8 every single asbestos personal injury trial I have started over the last twenty years,  
9 there has never been more than one "trial proceeding" in the Superior Court. If the  
10 case went to verdict against one or more defendants, it did so only once. A single  
11 final judgment was rendered in the case, and there was never a second "trial" against  
12 defendants not appearing in the first trial.

13           7. In every asbestos case that I have tried to verdict, issues under  
14 California Civil Code sections 1431.1, *et seq.* ("Proposition 51") have been tried to the  
15 jury and incorporated in the jury's verdict. In each such case, the defendant(s) trying  
16 the case to verdict have offered evidence of exposure to the asbestos-containing  
17 products of companies that either never appeared in the case because of earlier  
18 bankruptcy filings (e.g. Johns-Manville Corporation; Pittsburgh Corning Corporation;  
19 Fibreboard Corporation) or had been sued but were no longer in the case when it  
20 went to verdict. In each such case, to one degree or the other, the jury has allocated  
21 or apportioned fault to the plaintiff himself, the defendants going to verdict and other  
22 "joint tortfeasors" comparatively responsible for the plaintiff's cancer including, at  
23 times, the plaintiff's employer. For that reason, once the verdict was returned in the  
24 case, there could be no "second" personal injury verdict entered against other parties  
25 because the two verdicts could never be reconciled and/or they would remain  
26 hopelessly in conflict with each other.

27           8. Accordingly, in my experience, once the jury in an asbestos  
28 personal injury case is sworn and trial commences with the testimony of a witness,

1 the only parties who remain adverse to the plaintiffs in the case are the defendant(s)  
2 who, through counsel, are actually trying the cause to a conclusion. No other party  
3 has ever reappeared in the action and disputed an issue with the plaintiff, none has  
4 ever offered evidence on their own behalf and none has ever advocated their own  
5 interests in opposition to the claims being advanced by the plaintiff. For all practical  
6 purposes, the parties that "settled" with a plaintiff and thereafter disappeared from the  
7 trial were no longer either parties in the case or defendants at trial -- and that is the  
8 way the trial court and the plaintiff treated them in every single asbestos case in  
9 which I commenced trial as a defense attorney.

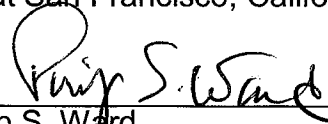
10 9. I have tried at least three cases to verdict in which the plaintiffs  
11 were represented by the Brayton Purcell office. In each of those cases, during post-  
12 trial proceedings, plaintiffs' counsel disclosed copies of their standard settlement  
13 agreements with the defendants who had settled prior to the case going to the jury.  
14 Each of those standardized agreements included a "wrongful death waiver" providing  
15 that the plaintiffs agreed, for the consideration recited in the settlement, not to sue the  
16 settling defendant in any future damage action brought by the heirs of the dying  
17 plaintiff.

18 10. After this Court ordered the instant action remanded to state court,  
19 trial resumed in Department 611 of the Superior Court, the Hon. Diane Elan Wick  
20 presiding. The jury could not reach a verdict, and Judge Wick declared a mistrial.  
21 Thereafter, the presiding judge sent the case to Department 602, the Hon. Donald  
22 Mitchell presiding, for retrial. The case has been in trial against John Crane, the only  
23 defendant, for the past several weeks. It is scheduled to go to the jury on or about  
24 August 23, 2007. No defendant other than John Crane has appeared in either trial  
25 department in this case, and the matter will go to verdict against John Crane alone.

26 I declare under penalty of perjury under the law of the State of California  
27 that the foregoing is true and correct.

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Executed on August 23, 2007, at San Francisco, California.

  
Philip S. Ward

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